IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO.561 OF 2004
IN
SUMMARY SUIT NO.2753 OF 1999

Maharashtra State Powerlooms Corporation Ltd .... Plaintiff
versus
1. M/s. Jasran Overseas Inc. and Anr .... Defendants

S.P. Munghate with Mr. G.K. Karkera for the plaintiffs.
K.B. Irani with Mr. O.P. Soni for the defendants

CORAM: S.U. KAMDAR, J.

DATE : 1ST MARCH, 2005.

P.C. :

1. The present chamber summons is taken out in terms of prayer clause (a), (b) and (c). Prayer (a) seeks that the delay in payment of the instalment in terms of the consent decree dated 30/11/2000 of Rs. 13,00,000/- be condoned. Prayer (b) is for rescheduling of the instalments by providing for instalments of Rs.50,000/- per month in respect of

the balance decreetal amount of Rs.13,00,000/- By prayer clause (c) of the chamber summons the plaintiffs are seeking that the plaintiff should be directed to withdraw the criminal complaint no. 14/S/1998 and 23/S/2002 pending before the 23rd court of the Metropolitan Magistrate, Mumbai, in terms of clause 6 of the consent decree.

2. In the consent decree dated 30.11.2000o it is inter-alia provided that there should be decree for Rs.28,93,377/- with interest at the rate of 18% p.a. on the principal amount of Rs.20,81,566/-. The said decreetal amount was required to be paid by instalment under clause-2 thereof. It was provided that the said amount of Rs.19,60,000/- will be paid in a monthly instalment of Rs.1,000/- per month from November, 2001 to April, 2001, Rs.15,000/- from May 2001 to January, 2003 and Rs.60,000/- in the month of July, 2003. Admittedly the defendant has committed breach under the terms and conditions of the consent terms as contemplated under clause-1 and 2 of the said consent terms. The defendants have so far paid only Rs.6,60,000/- and that also not paid in

accordance with the time stipulated for payment of instalments under clause-2 thereof. The amount of Rs.6,00,000/- was due and payable some time in or about April, 2001. However, it is an admitted position that the said sum of Rs.6,00,000/- are paid only in the month of 15.3.2002. Thus there is default even in making payment of the said amount of Rs.6,00,000/- as contemplated under clause-2 (i) of the consent terms. Under clause-3 it is provided that in an event of default the plaintiff will be entitled to execute the decreetal amount as provided under clause 1 thereof.

3. There is default in payment of the entire balance decreetal amount of Rs.13,00,000/-. However he contends that in view of the fact that he has paid Rs.6,00,000/- as contemplated under clause-6 of the consent terms, the said clause should be enforced and the plaintiff should be directed to withdraw the said criminal complaints. It is contended that even though he has committed defaults in making payment of Rs.6,00,000/- on its due dates and has committed further defaults on payment of the balance decreetal

amount still he is entitled to enforce clause-6 thereof and the plaintiffs should withdraw the said criminal complaints. He has contended that on accepting the payment of Rs.6,00,000/- the delay in making the payment is waived by the plaintiff herein and thus default if any in respect of Cl.6 of the consent decree is condoned by the plaintiffs and therefore the same should be enforced. Learned counsel for the defendant has also relied upon the provisions of section 54 and 55 of the Contract Act and has contended that even if time is the essence of the contract still the acceptance of payment subsequently to the time stipulated in the consent decree amounts to waiver of time limits provided therein. He has therefore contended that irrespective of the delays on his part of making payment of Rs.6,00,000/- on due dates or further defaults in paying the decreetal amount still he is entitled to enforce clause-6 and therefore prayer (c) should be granted. I am not inclined to grant prayer (c) because it is now well settled that when the consent decree creates a reciprocal obligations on the parties then both the parties are required to

comply with the same as per the terms of the consent decree. Admittedly there is delay in making the payment of Rs.6,00,000/- as well as default in making payment of the balance of the decreetal amount as contemplated under the consent decree and thus in law he is not entitled to enforce clause (c). Thus I reject prayer (c).

4. Now turning to prayer (a) & (b) of the chamber summons, I am of the opinion that the time to make payment of the balance of the decreetal amount has expired since long, learned counsel for the defendants contended that it is a discretion of the court under section 148 of CPC for granting extension of time for the purpose of making payment. Even today the defendant is not in a position to make payment of the balance amount of Rs.13,00,000/-. On my offer to the defendant to make payment of the balance of the principal amount within a period of three months, the learned counsel for the defendant on the instructions states that he is not in a position to make payment as suggested by the court. However he contends that there should be an extension

granted. On the other hand the plaintiffs are not consenting to grant of such extension of time. In my opinion firstly the consent terms can be varied only with the consent of the parties and not otherwise. Even assuming I have a power to grant extension of time, I am not inclined to exercise my power to grant extension of time for the simple reason that not only there are substantial defaults on the part of the defendant to make payment of the decreetal amount as agreed under the consent terms, but even today he is not willing to make payment of the defaulted instalment amounts. In view thereof I do not find any merits in the present chamber summons and I dismiss the same with no order as to costs.

sd/-

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